

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

FILED BY CLERK

JAN 16 2007

COURT OF APPEALS
DIVISION TWO

THE STATE OF ARIZONA,)	
)	
Respondent,)	2 CA-CR 2006-0151-PR
)	DEPARTMENT B
v.)	
)	<u>MEMORANDUM DECISION</u>
)	Not for Publication
JAMES PATRICK WILLIAMS,)	Rule 111, Rules of
)	the Supreme Court
Petitioner.)	
)	

PETITION FOR REVIEW FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR-59621

Honorable Clark W. Munger, Judge

REVIEW GRANTED; RELIEF DENIED

Barbara LaWall, Pima County Attorney
By Taren M. Ellis

Tucson
Attorneys for Respondent

James Patrick Williams

Florence
In Propria Persona

E C K E R S T R O M, Presiding Judge.

¶1 James Williams was convicted of armed robbery and sentenced to a presumptive prison term of 15.75 years after the trial court found he had three historical

prior felony convictions. This court affirmed his conviction and sentence on appeal and denied relief on his consolidated first and second petitions for post-conviction relief, filed pursuant to Rule 32, Ariz. R. Crim. P., 17 A.R.S. *State v. Williams*, Nos. 2 CA-CR 98-0364, 2 CA-CR 99-0501-PR, 2 CA-CR 01-0259-PR (consolidated) (memorandum decision filed Jan. 10, 2002). Williams now seeks relief from the trial court's dismissal of his third post-conviction petition, a ruling we review for an abuse of discretion. *See State v. Decenzo*, 199 Ariz. 355, ¶ 2, 18 P.3d 149, 150 (App. 2001). We find no abuse.

¶2 In his petition and supplement thereto, Williams raised six claims. The trial court correctly denied post-conviction relief on each claim. His three claims related to his sentence—that a jury did not hear evidence on all facts relevant to sentencing, that the trial court's reliance on the presentence report for aggravating factors violated his constitutional rights, and that trial counsel was ineffective by failing to object to that reliance—are meritless because the trial court imposed a presumptive prison term, not an aggravated term, a fact he acknowledged in his reply to the state's response below. *See State v. Johnson*, 210 Ariz. 438, ¶ 13, 111 P.3d 1038, 1042 (App. 2005) (no violation of Sixth Amendment right to jury trial on aggravating circumstances when trial court imposes presumptive sentence).

¶3 And the court properly found Williams's other claims precluded—that his conviction was the result of faulty identification testimony, that his trial counsel was ineffective in cross-examining the state's chief witness, and that he was subjected to double

jeopardy.¹ Because the first and third claims were raisable on appeal, they are precluded as waived by not having been previously raised. *See* Ariz. R. Crim. P. 32.2(a)(1), (3). Williams's ineffective assistance of counsel claim is precluded because he raised other claims of ineffective assistance in his first post-conviction petition. *See State v. Spreitz*, 202 Ariz. 1, ¶ 4, 39 P.3d 525, 526 (2002); *State v. Conner*, 163 Ariz. 97, 100, 786 P.2d 948, 951 (1990).

¶4 Accordingly, we grant the petition for review but deny relief.

PETER J. ECKERSTROM, Presiding Judge

CONCURRING:

J. WILLIAM BRAMMER, JR., Judge

PHILIP G. ESPINOSA, Judge

¹This claim is apparently based on that fact the Williams was convicted of one armed robbery count in his second trial. He was tried on two armed robbery counts in his first trial and was acquitted on one, but the jury was unable to reach a verdict on the second, the count at issue in his second trial.